

2009 City of Detroit – Charter Revision Commission Package
For Tuesday, June 8, 2010 @ 6:00 p.m.
Detroit Regional Chamber of Commerce
One Woodward Ave., 19th Floor Conference Room - Detroit, Michigan 48226

Agenda and Informational Package

- I. Call to Order (6:00 P.M.)
- II. Roll Call
- III. Approval of the Minutes
- IV. Approval of Agenda
- V. Substantive Charter Review, Presentation regarding:

The Detroit Corporation Counsel:
An Official Trapped Between Competing Interests

Marcia L. Proctor

Former Director of the American Bar Association Center for Professional Responsibility,

Elliott Hall

Partner Dykema Gossett, former Corporation Counsel during the Coleman A. Young Administration and former Executive Vice President of Ford Motor Company

Donald Pailen

Former City of Detroit Corporation Counsel

Commission Questions and Answers

Public Questions on the Presentation

- VI. Report of the Chair
- VII. Report of the Vice Chair
- VIII. Reports from Executive Director and/or General Counsel (7:20 P.M.)
- IX. Committee Reports (7:30 P.M.)
 - (a) Office Committee (no report)
 - (b) Personnel Committee (Update on AA process)
 - (c) Rules and Structure Committee (no report)
 - (d) Budget Committee (no report)
- X. Public Comments (2 minutes per person) (7:45 P.M.)
- XI. Unfinished Business
- XII. New Business
- XIII. Adjournment (8:30 P.M.)

Meeting Schedule for the Month (June, July, August, 2010)

<p>Tuesday, June 22, 2010 at 6:00 P.M. Butzel Family Center 7707 Kercheval Detroit, MI 48234 (Eastside) Topic: Removal of Office of Elected and Appointed Officials</p>	<p>Tuesday, July 13, 2010 at 6:00 P.M. Delta Sigma Theta Sorority Headquarters 24760 West Seven Mile Road Detroit, Michigan 48219 (Westside Detroit) TOPIC: Police & Fire Commissions</p>
<p>Tuesday, July 27, 2010 at 6:00 P.M. Mayflower Congregational UCC 7301 Curtis Avenue Detroit, MI 48221 (Northwest Detroit) TOPIC: Economic Development & Planning</p>	<p>Tuesday, August 10, 2010 at 6:00 P.M. Kemeny Center 2260 South Fort Street Detroit, Michigan 48217 (Southwest Detroit) TOPIC: Privatization</p>

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Attachments: Presentation from Ms. Proctor re: Corporation Counsel

V. Substantive Charter Review, Presentation regarding:

**The Detroit Corporation Counsel:
An Official Trapped Between Competing Interests**

Panel:

Marcia L. Proctor

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MEMORANDUM

To: City of Detroit Charter Revision Commission

Executive Director, Gregory Hicks

From: Lamont D. Satchel, General Counsel

Date: June 4, 2010

RE: Charter History and Summary of Corporation Counsel

1918 Charter

The original 1918 City of Detroit Charter contained a provision establishing the position of Corporation Counsel and the city law department. (Title 4, Ch. 23, Corporation Counsel) The Corporation Counsel was appointed by the mayor as head of the law department and was required to be a U.S. citizen, city resident and have practiced law at least ten (10) years, in addition to being a practicing lawyer at the time of appointment. (Title 4, Ch. 23, §§1 and 2, Appointment and Qualifications, respectively) Compensation was set at not less than \$7,500. (Title 4, Ch. 23, §2, Qualifications) The mayor was given the power to remove the corporation counsel without cause and fill any vacancy in the position. (Title 4, Ch. 23, §2, Qualifications) The Charter detailed the law department's personnel that the Corporation Counsel was empowered to hire, which included a chief assistant, up to five assistant corporation counsels and support personnel as deemed necessary by the Corporation Counsel.

As the chief legal counsel for the city of Detroit and its departments the Corporation Counsel was generally vested with the powers necessary to discharge his duties, which substantive duties included (Title 4, Chapter 23, §5, General Powers and Duties):

1. Draft or approve as to form all proposed ordinances;
2. Prepare any legal document or papers required by city council or any city department;
3. Provide legal opinions to the mayor, city council or any city department head, upon request;

The Charter identified other functions, duties, procedures and roles of the Corporation Counsel;

1. Accept service of process (Title 4, Ch. 23, §6, Service of Process);
2. Serve as legal counsel for all city departments and approve the board of education, library commission, department of police and department of health's employment or use of legal counsel (Title 4, Ch. 23, §7, Counsel for all Departments);
3. Serve as counsel for the state in city cases (Title 4, Ch. 23, §8, Counsel for State in City Cases);
4. Procedure and powers in handling lawsuits filed against the city, requiring notification of suit to city council upon receipt of suit by city officers. Representation of the city in such suits and appeal if deemed appropriate (Title 4, Ch. 23, §9, Procedure of all Suits or Cases);

5. Where an appeal bond is not required to perfect appeal, the right to sue the city and recover damages as if a bond had been executed by the city (Title 4, Ch. 23, §10, Appeal Bonds);
6. Use of police detectives for law department business where requested of commissioner of police (Title 4, Ch. 23, §11, Detail of Detectives to Department);
7. Provide annual report to city council of work performed by law department, and other reports as city council may require (Title 4, Ch. 23, §12, Annual Report);
8. On or before the fifteenth day of January in each year, provide city controller an annual budget estimate for the ensuing fiscal year (Title 4, Ch. 23, §13, Annual Estimates);
9. Serve as ex-officio member of board of supervisors of Wayne County (Title 4, Ch. 23, §14, Ex-Officio Member).

The Charter also directed city council to enact ordinances required to implement the provisions of the chapter on corporation council. The only amendment to the 1918 Charter was twelve years later on September 9, 1930. The Charter was then amended to change the date by which the Corporation Counsel was required to inform the city controller of its annual budget estimate from on or before January 15 to on or before January 2. (Title 4, Ch. 23, §13, Annual Estimates)

1974 Charter

The 1974 Charter saw several substantive amendments to the chapter on Corporation Counsel. (1974 Charter, Article 6, Ch. 4, §6-401, et seq.):

1. The mayor's right to appointment of Corporation Counsel was made subject to city council's approval (Article 6, Ch. 4, §6-401, Law Department);
2. The requirement that Corporation Counsel have practiced law ten (10) years was replaced with a requirement that the Corporation Counsel and Deputy Corporation Counsel be attorneys licensed in Michigan (Article 6, Ch. 4, §6-402, Qualifications);
3. Clarity was provided that Corporation Counsel was empowered to represent any employee or officer in any proceeding involving official duties (Article 6, Ch. 4, §6-403, Civil Litigation);
4. City officers and agencies were allowed to request representation or assistance of outside counsel as special corporation counsel, where before it was upon recommendation of the Corporation Counsel. (Article 6, Ch. 4, §6-408, Special Counsel) A related section in the Charter expressly allowed city council to obtain outside legal counsel (Article 4, Ch. 1, §4-120, Special Counsel).

1997 Charter

The current Charter made no changes to section on Corporation Counsel.

Executive Director / General Counsel Report
June 8, 2010

2009 Detroit Charter Revision Commission Executive Director's Report: For June 8, 2010 Full Commission Meeting

Please note the following summary and action items for consideration by the Commission:

1) Follow-up – RFP Audio / Visual Services – 2 Proposals received.

Summary: Consistent with the deadline advertised in the RFP for audio / visual services (May 28, 2010), two proposals were received by the Charter Commission. The RFP's are under review and recommendations to award will be forwarded to the Commission consistent with the RFP's projected time schedule.

Informational items: (a) Information only; the deadline for the return of the RFP was May 28, 2010 at 4:00 PM to the Commission Office, 32nd Floor, Cadillac Tower Building, 65 Cadillac Square, Detroit, MI 48226.

2) Detroit City Council Budget Hearing

Summary: The City Council voted to override the Mayor's veto. Reports indicate that the override was in one consolidated vote including all of the voted items from the Mayor. Unless there are additional negotiations, amendments or compromises between the Mayor and City Council, the Charter Commission's allocation for fiscal 2010-2011 is \$ 500,000.00. The reduced budget will require rethinking many of the proposed plans for community outreach, promotions and data driven initiatives under consideration by the Commission.

Informational items: (a) Information only; staff is expected to present a revised spending plan to the Commission (Budget Committee) following the end of the city's budgetary process.

3) Donation of used equipment from Councilmember Gary Brown

Summary: To control expenditures, Commission staff has sought alternatives to the purchase of new equipment for the office. We are happy to report that we have received three used desktops and two used laptops from Gary Brown, Council President Pro Tem. The staff would like to note the cooperation of Councilmember Brown's staff for their efforts in securing the equipment.

Informational items: (a) Information only; The Commission is awaiting an invoice from WSU on the above.

4) Transfer of city allocation of fiscal year 2009-2010 to Commission controlled bank account.

Summary: The City of Detroit transferred \$250,000.00 into the Commission controlled bank account (Chase Bank) on Wednesday, June 2, 2010. The City also returned all of the Commission's invoices approved for payment and submission to the city for processing. We are currently preparing to pay the invoices and other obligations of the Commission. In accordance with our contractual obligations with staff, the Commission has paid staff compensation back to March 2010. We have also prepared checks to cover past Commissioner stipends dating back to January, 2010 and will distribute the stipend checks after we obtain a second signature for the checks.

Finally, we have initiated an enhanced process for tracking, recording and reporting our finances. In the past, our operating assumption was that the city would largely control our expenditures and maintain the backroom operations to ensure integrity in the process. Our obligations were to process items for payment, obtain the necessary approval on the Commission side and simply submit the appropriate invoice, transmittal letter and backup materials for payment. Included in the city dependent system was a built-in process of accountability and oversight.

Because of the change in our handling of financial matters, we have enhanced our procedural handling of our accounting process. We have purchased a copy of QuickBooks, a financial management system especially adaptable for small businesses and not-for-profit organizations. We also purchased one hour of technical support to receive assistance in setting up our chart of accounts and identifying key financial reports that we plan to use in reporting to the budget committee and full Commission on the status of our financial situation. Because of the small office, it is important that we develop procedures to segregate our financial process. Most organizations have the appropriate staffing to separate key financial functions to reduce the potential for abuse. Normally, there is a separation between preparing checks, reconciling the checking account or reviewing bank statements.

To enhance the integrity of our overall financial management, I recommend that we purchase part-time outside bookkeeping services similar to the support that a small business or small not-for-profit would seek because of limited staffing levels. The Commission would retain control over its operations. Previous measures that have already been approved in connection with the Commission's financial operations will remain intact. The outside service would reconcile our account and review bank statements as an extra measure of accountability. Additionally, the outside service would prepare year-end financial data for examination by our auditors (city). Given the projected number of transactions involved in running the Commission, preliminarily, I have estimated this service to be about \$150.00 to \$200.00 per month or an annual cost of \$1,800.00 to \$2,400.00.

Action Item: The staff requests approval of the report including the authorization to engage the services of a part-time outside bookkeeping service to reconcile our account and prepare year-end financial data for auditing and reporting demands.

5) Press Announcement for June 8, 2010 - Presentations on the Office of Corporation Counsel. Staff would like to thank each Commissioner who provided feedback on the original draft. Remarks from Commissioner John Johnson were especially appreciated. .

Press Announcement

**City of Detroit, Charter Revision Commission (2009)
32nd Floor, Cadillac Tower Building
Detroit, Michigan 48226**

2009 Charter Revision Commission: Officers Freman Hendrix, Chairman, Jenice Mitchell Ford, Vice Chair,
Members: Cara J. Blount, Ken Coleman, Reggie Reg Davis, Ken Harris, Teola P. Hunter, John Johnson, Rose Mary C. Robinson
Staff: Gregory Hicks, Executive Director, Lamont Satchel, General Counsel

Press Release – Detroit Charter Revision Commission
The Detroit Corporation Counsel:
A Official Trapped Between Competing Interests
Tuesday, June 8, 2010 at 6:00 P.M.
at the Detroit Regional Chamber of Commerce, 1 Woodward Ave.,
19th Floor / Conference Room, Downtown Detroit

Immediate Release
June 3, 2010

Contact: Gregory Hicks
313-628-2517

As the head of one of the largest public law firms in Michigan, is the Detroit Corporation Counsel hopelessly trapped between three dissimilar sets of interests – the Mayor, as head of the Executive Branch, the Detroit City Council as the Legislative Branch of local government and the legal entity, the interest of the municipal corporation? How much of a role can an energetic Corporation Counsel play when his/her client's interests are split and oftentimes at odds with each other? The common role of Corporation Counsel is that of an appointed official whose loyalty is stretched between the interest of the municipality and the interest of elected officials.

Are there structural changes needed to protect the interests of the municipality, even when the bosses are at odds with one another? The Detroit Charter Revision Commission has invited three subject experts to address these and other related issues at its June 8, 2010, meeting hosted at the Detroit Regional Chamber of Commerce, 1 Woodward Avenue, 19th Floor Conference room (Downtown Detroit). Marcia L. Proctor, former Director of the American Bar Association Center for Professional Responsibility, Elliott Hall, partner Dykema Gossett, former Corporation Counsel during the Coleman A. Young Administration and former Executive Vice President of Ford Motor Company along with Donald Pailen, the longest serving Corporation Counsel in Detroit's modern history, will jointly address the issue of executive appointments and other appointed officials and their roles, responsibilities and structural impediments of local government that impinge on appointed officials like Detroit's Corporation Counsel.

The feeling of being trapped or being forced to serve different sets of interests is not new nor is it limited to the Detroit Corporation Counsel. In a recent taking of Detroit Metropolitan Airport, Wayne County's Executive and Legislative Branches of government were at odds. One branch of government fought against the State taking of the airport, while the other branch organized

and encouraged the taking. The stalemate resulted in a conflict of interest and one branch of Wayne County Government sought outside counsel forcing the taxpayers to foot the bill of more than \$1 Million dollars of attorney fees beyond the normal cost of running the office of Corporation Counsel. In the recent challenge to remove Detroit's Mayor Kwame Kilpatrick, the Detroit City Council, the Mayor and the municipal corporation "the city" all had competing interests. The City Council complained that the Corporation Counsel did not represent the interest of the Council and sought independent counsel to represent their interests against the interest of the Mayor. Many outsiders wondered if the municipal corporation's interests (the joint interest of both branches of government, executive and legislative and the municipal entity, the city) were adequately championed.

Still others believe that the Corporation Counsel, as head of the Law Department, is destined to make decisions that are more political than legal, especially in the awarding of outside legal contracts to local law firms who in turn are often large political contributors to the re-election campaigns of the Mayor and City Council. Additionally, under a strong Mayor-weak Council form of government, where the Mayor appoints and removes several critical appointed officials, how can we structure independence and greater cooperation in the leadership of critical departments that deliver daily services to or on behalf of the citizens of Detroit? Do we need greater transparency and accountability with appointed officials who oftentimes carry out the missions of elected officials?

The Detroit Charter Revision Commission will host an informational discussion on how Detroit's City Charter might proscribe the role and responsibilities of appointed officials in local government. The panel of experts assembled by the Commission has both practical and technical knowledge that can help restructure the appointment process and role of critical department heads in local government. Elliott Hall and Donald Pailen administered the office of Corporation Counsel with high marks from individual citizens, the corporate community and city workers. Their observations combined with the technical standards championed by Marcia Proctor are intended to help the Charter Revision Commission answer many of the daunting questions around the structure of local government.

The Charter Revision Commission is interested in understanding "best practices" and the experiences of local government on the need for and operation of Charter enabled legal counsel to confront and eliminate corruption and encourage transparency and accountability in government. The Commission is also concerned about the quality of legal leadership in local government and is open to suggestions about the necessary experience and standards to improve on the appointment of officials who are the conveyors of services to the residents of any municipal corporation like Detroit.

The presentation and discussion will take place as part of the Commission's meeting on **Tuesday, June 8, 2010 at 6:00 P.M. at the offices of the Detroit Regional Chamber of Commerce, One Woodward Avenue, 19th Floor Conference Room, Downtown Detroit.**

The Panel will present their observations and research data on the structure and practical elements surrounding the appointment of government officials like the Corporation Counsel. After presentations, the members of the Charter Commission will ask questions on the presentations or topics related to the Charter revision process. Following the exchange between Commissioners and panelists Proctor, Hall and Pailen, the Commission will open the floor for public comments. If you have questions, please contact Gregory Hicks, Executive Director, Detroit Charter Revision Commission at 313-628-2517.

—end—

CITY OF DETROIT CHARTER COMMISSION

Office Committee Report

June 8, 2010

(No Report)

CITY OF DETROIT CHARTER COMMISSION
Personnel Committee Report
June 8, 2010

CITY OF DETROIT CHARTER COMMISSION
Personnel/Committee Report
Submit Date: June 4, 2010

Committee:	Personnel Committee (staff draft, in lieu of report)
Committee Chair:	Cara J. Blount
Members:	Freman Hendrix, John Johnson, Jenice Mitchell Ford
Meeting Date:	None. Informational item.
Meeting Time:	None.
Attendees:	None.
Next Meeting:	Saturday, June 12, 2010 @10:00 A.M. Northwest Activities Center

Informational Item:

The May 21, 2010 report of the Personnel Committee indicated that second round interviews for the AA position were scheduled for June 5, 2010. The interview dates have been rescheduled for Saturday, June 12, 2010 at the Northwest Activities Center beginning at 10:00 A.M. and concluding at 5:10 P.M. The interviews will be conducted in room #107 (NWAC)

CITY OF DETROIT CHARTER COMMISSION
Rules and Structure Committee Report
June 8, 2010

No Report

CITY OF DETROIT CHARTER COMMISSION
Budget Committee Report
June 8, 2010

No Report

